## REMARKS

The Non-Final Office Action mailed February 5, 2008 considered claims 1, 4-1, 12, and 15-29. Claims 1, 4-10, 12 and 15-20, 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lerner et al. (US 6,192,395) hereinafter *Lerner* in view of Curtis et al. (US 6,772,335) hereinafter *Curtis*. Claims 21-26, 28-29 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Lerner* in view of *Curtis* in further view of Blattner et al. (US 2004/0221224) hereinafter *Blattner*.[1]

As a preliminary matter, applicant's thank the Examiner for the courtesies extended during the telephonic interview held on May 1, 2008.

By this paper, claims 1, 10, and 12 have been amended. Claims 1, 4-10, 12, and 15-29 remain pending in the application, of which, claims 1, 10, and 12 are the only independent claims.

Each of the independent claims was rejected under 35 USC 103 as being unpatentable over *Lerner* in view of *Curtis*. Applicants respectfully traverse this rejection and have amended each of the independent claims to more fully illustrate the differences between the claims as now recited and the disclosures of *Lerner* and *Curtis*.

In particular, the claims of the present application recite an invention whereby a speaker identifier, which includes a username, is displayed in conjunction with a visual indicator to indicate that a voice speaker in a computing session is speaking. Further, the claims of the present application recite that the visual indicator and the username are each selectively and temporarily displayed, only when the voice speaker is speaking. The claims further recite that the username and a visual indicator are displayed adjacent to one another. An example of this functionality is illustrated in Figure 4 of the present application. Figure 4 illustrates that a speaker identifier including the username gamertag "AVENGER" is displayed adjacent to the visual indicator 362 while a player controlling the vehicle 360 is currently speaking through a voice communicator attached to a remote gaming system.

The art cited in the present office action fails to disclose the limitations as now recited. In particular, and as noted previously, the art fails to show at least selectively and temporarily

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[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

displaying the username only when the voice speaker is speaking. Rather, both *Lerner* and *Curtis* appear to display screen names or textual labels constantly irrespective of whether are not the voice speaker is speaking. While the art cited may disclose varying the appearance of screen names or textual labels, the art fails to show displaying selectively and temporarily as recited by the claims of the present application.

With regard to *Lerner, Lerner* teaches that a visual ID 206 is associated with a participant. The visual ID 206 is an icon that represents the participant. See *e.g.* column 6, lines 28 through 37. *Lerner* appears to show that at least the label of the visual ID 206 persists whether or not a participant is speaking. For example, at col. 13, lines 7-12 teach:

> In FIG. *7b* visual identification module 60 determined that participant 1 is speaking. Accordingly, unlike participants 2 thru N, the visual ID state 212 of participant 1 is set to "1" and the visual ID 206 of the participant is hatched rather than blank.

And at col. 13, lines 16-20:

> In FIG. *7c,* participants 2 and 3 are now speaking and participant 1 has stopped speaking. Accordingly, the visual ID 206 of participants is now hatched while all other participants are unhatched.

Thus, the visual ID is changed by hatching when a participant speaks, and is unhatched when the participant is not speaking, but is nonetheless displayed along with the name label. This is in direct contrast to what is recited by the claims. As illustrated in Figures 7B and 7C of *Lerner,* the labels participant 1, participant 2, participant 3, etc. persist whether or not a participant is speaking. Only hatching indicating that a speaker is speaking is changed on the visual ID 206. Thus, the claims appear to be patentable over *Lerner.*

*Curtis* does not compensate for the deficiencies of *Lerner.* Rather, *Curtis* appears to show functionality very similar to that of *Lerner* without disclosing the features of the claims as presently recited. In particular, *Curtis* appears to show textual labels for participants next to widgets. An example of this is illustrated in Figure 3 where the textual label Pavel is illustrated next to the widget 64, the textual label Mike is illustrated next to the widget 66, the textual label Reni is illustrated next to a widget, and the textual label Nichols is illustrated next to a widget. However, there is no indication in *Curtis* that the textual labels are selectively displayed when a participant is speaking. Rather, *Curtis* appears to teach that only a speaker widget is highlighted when a particular user speaks. See *e.g.* column 10 lines 40- 41, and, column 11 lines 5-6. However, the username is not selectively and temporarily displayed only when a voice speaker is speaking as is recited by the claims of the present application.

With regard to independent claim 12 as now amended and dependent claims 21 through 26 and 28 through 29, applicant strongly traverses the rejections as now set forth. In particular, each of these claims was rejected based on *Blattner*. As explained previously, *Blattner* was filed on December 30, 2003, subsequent to the filing of the present application. Further, the Examiner states that the effective filing date of *Blattner* is November 12 2002 based on the Examiner's review of the provisional applications to which the *Blattner* reference claims priority. Applicant has reviewed the provisional applications cited and disagrees with the Examiner insofar as *Blattner* is being used for support of the purported teachings. Applicant respectfully request that if *Blattner* is maintained as a reference, that specific citations to the provisional applications be used as opposed to, or in addition to citations to the *Blattner* reference itself. To be used as a reference, the portions of *Blattner* used must be supported by the priority documents.

Irrespective of whether are not the *Blattner* reference qualifies as prior art for showing the purported teachings, Applicant nonetheless strongly traverses the rejections based on the *Blattner* reference. Essentially, the Office Action states that because *Blattner* teaches "that the user can create an Icon that expresses their desire, mood, situations, etc. and the Icon can be virtually any image they desire" that the rejections based on *Blattner* are sustainable. Applicant respectfully submits that this is a very slippery slope, and if such a rejection were allowed to stand, *Blattner* could essentially be used to invalidate any display indicator because of what a user *could* do, and not based on any teaching in the prior art. Particularly telling is the Office Action statement that "the user without a microphone can create an expressive avatar that displays to the other users that they do not have a microphone to contribute to the audio conversation." However, the Office Action cites no art showing a user displaying such an avatar and indeed no avatars corresponding to elements of several of the recited claims[2]. If rejections

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[2] For example, for showing adjusting voice data to sound like and elf (claim 22) or a preselected gender (claim 23), the Office Action cites to paragraph [0061] of Blattner. This paragraph does not show adjusting voice data, but rather using audio samples without adjustment. Paragraph [0061] of Blattner states:

> The voice of an avatar may correspond to the voice of a user associated with the avatar. To do so, the characteristics of the user's voice may be extracted from audio samples of the user's voice. The extracted characteristics and the audio samples may be used to create the voice of the avatar. Additionally or alternatively, the voice of the avatar need not correspond to the voice of the user and may be any generated or recorded voice.

For showing that a participant does not have a voice communicator, the Office Action cites to paragraphs 016, 53-55 and 0192. Applicant is particularly baffled by these citations, as they appear to have nothing to do with what they are purported to teach. For the Examiners convenience, they are reproduced below:

> [0016] One of the multiple personas may be a work persona associated with presence of the instant messaging sender at a work location associated with the instant messaging sender. One of the multiple personas may be a home persona associated with presence of the instant messaging sender at home. A determination may be made as to whether the instant messaging sender is at home or at the work location. In response to a determination that the instant messaging sender is at home, the home persona may be selected for use in the instant messaging

could be based on what a user could do, without specific citation to art that teaches specifically

doing what is purported to be taught, obtaining patent protection would be subject to the Office's

imagination of what one might do.  Indeed to protect against such mischief where an examiner

might be tempted to use impermissible hindsight reconstruction of the applicant's own invention,

the MPEP at 2142 states

> Knowledge of applicant's disclosure must be put aside in reaching this determination.... The tendency to resort
> to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the
> examination process. However, impermissible hindsight must be avoided and the legal conclusion must be
> reached on the basis of the facts gleaned from the prior art.

In the present situation, the facts suggesting certain elements, such as "modifying voice data as a

function of a predefined characteristic selected by the voice speaker" (claim 21), "adjusting the

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communications session. In response to a determination that the instant messaging sender is at the work location, the work persona may be selected for use in the instant messaging communications session.

[0053] More particularly, the text of a message to be sent is specified by the sender in the message specification text box 145. The text entered in the message specification text box 145 is sent to the recipient when the sender activates the send button 160. When the send button 160 is activated, the instant message application searches the text of the message for animation triggers. When an animation trigger is identified, the recipient avatar 115 is animated with an animation that is associated with the identified trigger. In a similar manner, the text of a message sent by the instant message recipient and received by the sender is searched for animation triggers and, when found, the sender avatar 135 is animated with an animation associated with the identified trigger.

[0054] In addition, the sender avatar 135 or the recipient avatar 115 may be animated in direct response to a request from the sender or the recipient. Direct animation of the sender avatar 135 or the recipient avatar 115 enables use of the avatars as a means for communicating information between the sender and the recipient without an accompanying instant message. For example, the sender may perform an action that directly causes the sender avatar 135 to be animated, or the recipient may perform an action that directly causes the recipient avatar 115 to be animated. The action may include pressing a button corresponding to the animation to be played or selecting the animation to be played from a list of animations. For example, the sender may be presented with a button that inspires an animation in the sender avatar 135 and that is distinct from the send button 160. Selecting the button may cause an animation of the sender avatar 135 to be played without performing any other actions, such as sending an instant message specified in the message composition area 145. The played animation may be chosen at random from the possible animations of the sender avatar 135, or the played animation may be chosen before the button is selected.

[0055] An animation in one of the avatars 135 or 115 displayed on the instant messaging user interface 105 may cause an animation in the other avatar. For example, an animation of the recipient avatar 115 may trigger an animation in the sender avatar 135, and vice versa. By way of example, the sender avatar 135 may be animated to appear to be crying. In response to the animation of the sender avatar 135, the recipient avatar 115 also may be animated to appear to be crying. Alternatively, the recipient avatar 115 may be animated to appear comforting or sympathetic in response to the crying animation of the sender avatar 135. In another example, a sender avatar 135 may be animated to show a kiss and, in response, a recipient avatar 115 may be animated to blush.

[0192] In the system 1800, four animations may be separately initiated based on a text trigger in one instant message. An instant message sender projecting a self-expressive avatar uses instant message sender system 1605 to sends a text message to an instant message recipient using instant message recipient system 1620. The instant message recipient also is projecting a self-expressive avatar. The display of the instant message sender system 1605 shows an instant message user interface, such as user interface 100 of FIG. 1, as does the display of instant message recipient system 1620. Thus, the sender avatar is shown on both the instant message sender system 1605 and the instant message recipient system 1620, as is the recipient avatar. The instant message sent from instant message sender system includes a text trigger that causes the animation of the sender avatar on the instant message sender system 1605 and the sender avatar on the instant message recipient system 1620. In response to the animation of the sender avatar, the recipient avatar is animated, as described previously with respect to FIG. 6. The reactive animation of the recipient avatar occurs in both the recipient avatar displayed on the instant message sender system 1605 and the recipient avatar displayed on the instant message recipient system 1620.
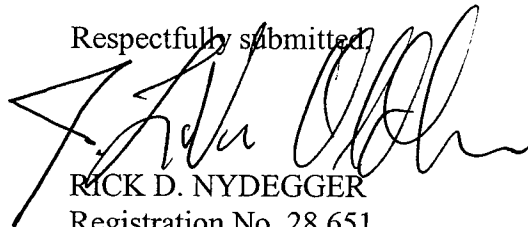
voice data to sound like an elf" (claim 22), "adjusting the voice data to sound like a preselected gender" (claim 23), displaying an indicator that a participant does not have a voice communicator (claim 28), and "displaying an indicator that a participant can hear voice communications, but does not have a microphone" (claim 29) are clearly being gleaned not from the cited art (which applicant argues is not even prior art), but rather from the applicant's own disclosure, manifesting a clear application of impermissible hindsight reconstruction.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 5th day of June, 2008.

Respectfully submitted,

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